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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,473

06/28/2006

Alexander Keller

DJF 40060

8304

21015

7590

04/17/2008

PYLE & PIONTEK LLC

221 N. LASALLE STREET, SUITE 2036

CHICAGO, IL 60601

EXAMINER

COLLINS, MICHAEL

ART UNIT

PAPER NUMBER

3651

MAIL DATE

DELIVERY MODE

04/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/549,473	<b>Applicant(s)</b> KELLER ET AL.	
	<b>Examiner</b> MICHAEL K. COLLINS	<b>Art Unit</b> 3651	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/28/2008</u> .                                               | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 recites the limitation "the relaxed state" in line 7. There is insufficient antecedent basis for this limitation in the claim.
- Claim 1 recites the limitation "in axial direction" in line 17. There is insufficient antecedent basis for this limitation in the claim.
- Claims 2-12 depend from claim 1.
- Regarding claim 2 the applicant discloses, "**including an accommodating chamber (13) remains for one item between** the exit opening and the retaining cams (12)". The wording is confusing and, therefore, the claim is not clear.
- Claim 3 recites the limitation "the longitudinal direction" in line 2. There is insufficient antecedent basis for this limitation in the claim.
- Regarding claim 5 the applicant discloses, "in a plane bisecting the exit opening (6) **in width direction**". This is not clear. The examiner suggests "in a width direction".

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Slater (USP 3,412,897).

Regarding claim 1, Slater discloses a dosing dispenser for essentially spherical items (41) contained in a container, the dosing dispenser consisting of a soft elastic plastic material and comprising:

- an operating section (21,22,23),
- a tubular section (10) having a passage channel whose inner cross-section is larger than the items, and
- an exit opening (11) which in the relaxed state of the dosing dispenser has an elongated shape whose width is smaller and whose length is larger than the

items, the dosing dispenser being deformable by the application of pressure such that the exit opening gets larger than the items (see Figure 3), and wherein

- the tubular section (10) having the passage channel is attached at a distance from the exit opening (11) to an inner wall of the operating section (35) of the dosing dispenser,
- two retaining cams (23) are on the end of the tubular section (10) and oriented towards the exit opening (11), and
- the tubular section (10) is cut open (39) in axial direction, so that the tubular section comprises at least two circumferential sections that are movable relative to each other.

Regarding claim 2, Slater discloses the dosing dispenser according to claim 1, wherein the two retaining cams (23) on the end of the tubular section (10) are generally opposed to each other and have a clearance therebetween in the relaxed state of the dosing dispenser that is larger than the items (see Figures 1-3), and including

- an accommodating chamber remains for one item between the exit opening and the retaining cams (see Figure 1).

Regarding claim 3, Slater discloses the dosing dispenser according to claim 2, wherein the retaining cams (23) are arranged at places located in the longitudinal direction of the exit opening (see Figure 1-3).

Regarding claim 4, Slater discloses the dosing dispenser according to claim 1, wherein the dosing dispenser further comprises an annular plug section (37) for tightly resting an inner wall of an opening to the container, and

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- a circular lateral projection for resting on an upper edge of the container opening, and
- wherein the operating section projects beyond the container opening.

Regarding claim 5, Slater discloses the dosing dispenser according to claim 4, wherein two axially extending grooves (11) are formed on an outside of a circumferential wall of the operating section in a plane bisecting the exit opening (11) in width direction.

Regarding claim 6, Slater discloses the dosing dispenser according to claim 4, including two grooves (11) formed on an outside of a face wall of the operating section along a line that bisects the exit opening in width direction.

Regarding claim 7, Slater discloses the dosing dispenser according to claim 1, wherein the tubular section (10) is attached at a distance from the exit opening (11) to an inner wall of the operating section, and

- two retaining cams are formed on the end of the tubular section towards the exit opening.

Regarding claim 8, Slater discloses the dosing dispenser according to claim 7, wherein a free annular space is between the inner wall of the operating section and an outer wall of the tubular section.

Regarding claim 9, Slater discloses the dosing dispenser according to claim 7, wherein the tubular section includes at least one slot extending in the axial direction so that it comprises at least two circumferential sections that are movable relative to each other.

Regarding claim 10, Slater discloses the dosing dispenser according to claim 1, wherein the dosing dispenser is made in one piece in an injection molding process.

Regarding claim 11, Slater discloses the dosing dispenser according to claim 1 in combination with container.

Regarding claim 12, Slater discloses the dosing dispenser and container according to claim 11, including a cap (33) having an inwardly projecting pin which projects into the exit opening of the dosing dispenser in a state where the cap is mounted on a neck of the container.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL K. COLLINS whose telephone number is (571)272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.K.C.  
4/13/2008

/Gene Crawford/  
Supervisory Patent Examiner, Art  
Unit 3651